NEW TUCK SHEN v. PUBLIC PROSECUTOR

[A.Cr.J. (Wan Yahya J.) April 15, 1981]
[Malacca — Criminal Appeal No. 13 of 1980]

Criminal Law and Procedure — Plea of guilty — Plea bargaining — Sentence a matter of discretion for court — Whether accused misled as to consequence of his plea — Application to withdraw plea of guilty — Discretion of court — Sentence.

The appellant who had been charged with an offence under section 4(b) of the Prevention of Corruption Act, 1961, had pleaded guilty as it appeared that it had been agreed that if the accused pleaded guilty the prosecution would leave the matter of sentence to the court. After the defence counsel had given his plea in mitigation the D.P.P. prayed for a deterrent sentence. Counsel for the accused then applied for the plea to be withdrawn but this was refused. The accused was sentenced to six month's imprisonment and he appealed.

Held: (1) plea bargaining between the prosecution and the defence could only form a ground for appeal if the accused has been misled as to the consequence of the plea. The onus is on the appellant in this case to satisfy the court that he had been labouring under such a mistaken belief of law or fact at the time when he pleaded guilty to the charge and in this case he has failed to do so;

(2) the power to impose sentence lies with the court and not with counsel for the prosecution or the defence;

(3) in this case the consequences of pleading guilty to the charge had been explained to the appellant and the learned President was satisfied that the appellant understood them;

(4) the learned President in this case exercised his discretion correctly in refusing the plea of guilty to be retracted;

(5) the appellate court will not alter the sentences of the trial court unless the sentences are manifestly wrong and as in this case there was no manifest error shown, the appeal against sentence should be dismissed.

Cases referred to:-

(1) *R.* v. *Turner* [1970] 2 All E.R. 281.
(2) *Rex* v. *Sheridan* [1936] 2 All E.R. 883.
(3) *Rex* v. *Grant* [1936] 2 All E.R. 1156.
(4) *R.* v. *Mc Nally* [1954] 1 W.L.R. 933.
(5) *Reg.* v. *Campbell* [1953] 1 Q.B. 585.
(6) *Reg.* v. *Cole* [1965] 2 Q.B. 388.
(7) *S. (An Infant)* v. *Recorder of Manchester* [1971] A.C. 481.
(8) *R.* v. *Stanley Grice* (1978) 66 Cr. App. R. 167.
(9) *R.* v. *George Bird* (1978) 67 Cr. App. R. 203.
(10) *R.* v. *Llewelyn* (1978) 67 Cr. App. R. 149.
(11) *R.* v. *Ryan* (1978) 67 Cr. App. R. 177.
(12) *R.* v. *Atkinson* [1978] 2 All E.R. 460, 462.
(13) *Foster (Haulage) Ltd.* v. *Roberts* [1978] 2 All E.R. 751.
(14) *S.* v. *Recorder of Manchester* [1971] A.C. 481, 507.
(15) *R.* v. *Bali* 35 Cr. App. R. 164.
(16) *Public Prosecutor* v. *Datuk Tan Cheng Swee & Anor.* [1980] 2 M.L.J. 276.
(17) *Ng Kok Jooi* v. *Public Prosecutor* [1974] 2 M.L.J. 150.
(18) *Rex* v. *Teo Cheng Lian* [1949] M.L.J. 170, 171.
(19) *Public Prosecutor* v. *Fam Kim Hock* [1957] M.L.J. 20.

CRIMINAL APPEAL.

Manjeet Singh for the appellant.

Suriadi bin Halim Omar (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Wan Yahya J.: On June 14, 1980 the appellant was charged before the President of the Sessions Court, Melaka, for an offence under section 4(b) of the Prevention of Corruption Act, 1961. At all times he was represented by his counsel, Mr. Manjeet Singh Dhillon. The charge was read over and explained to the appellant in the presence of his counsel and he pleaded guilty to the charge. In accordance with the accepted practice in our courts, the Deputy Public Prosecutor Encik Ghazali, who appeared for the prosecution, outlined the facts of the case against the appellant. The appellant freely admitted these facts to be true. The learned President, having by then satisfied himself that the appellant understood the charge against him and the nature and consequences of his plea, accepted the obviously unequivocal plea of the appellant and recorded a conviction against him. The defence counsel then delivered his plea in mitigation on behalf of the appellant and requested the court to impose a non-custodial sentence. In reply the Deputy Public Prosecutor prayed, as they invariably did, for a deterrent sentence. Whereupon the learned counsel for the defence, angrily interposed to say that, as the learned Deputy Public Prosecutor had agreed earlier that he would be leaving the matter of sentence to the court, he had indicated this to his client. He expressed disgust at the learned Deputy Public Prosecutor's behaviour and asked the court not to accept the plea. That was the expression used by the defence counsel, as recorded by the P.S.C., but not by the newspaper reports on which the defence counsel was relying to discredit the accuracy of the President's records. According to the paper cuttings placed before this court, counsel also said some other unkind things about the learned Deputy Public Prosecutor, which, for the purpose of this appeal, I shall ignore. In the two newspaper cuttings from the *New Sunday Times* dated June 15, 1980 and the *Sunday Star* of the same date, counsel appears to have said a little more both to his credit and discredit. In the *Sunday Star* cutting he is reported to have said that his client "had been led into believing that the Deputy Public Prosecutor would not be pressing for deterrent sentence and that the court would be persuaded into giving a lenient sentence." The *New Sunday Times* made no mention about his client being "misled" but both papers refer to the cause of counsel's dissatisfaction to be the request for deterrent sentence by the Deputy Public Prosecutor. The *New Sunday Times* also contained a paragraph in which counsel said "he would not allow his client to plead guilty because of the breach." Now, not only are the newspaper reports at variance on some aspects of the case, but they also differ from the notes of evidence on the subject of this so-called pre-trial understanding reached between the Deputy Public Prosecutor and counsel, where it was recorded that the understanding was 'to leave the matter of sentence to the court' and 'sentence is a matter for the court to decide.'

Newspaper reports of court cases are, by no means, absolutely accurate *verbatim* reports of what actually transpired in the court room. Prolific writers of the press, eager to ensure more exciting and widespread public reading of their articles, at times resort to the use of different expressions from those actually used in court so as to stimulate the normally dull

court case into a more intriguing and emotional story. I mean no offence to the press, indeed I feel there is nothing to prevent them from doing so, within limits that is, as their reports are intended for use by different readers and certainly not by the appellate court or as summing up to the jury. Counsel should realise that it will require more than newspaper cuttings to discredit the written words of a trial President. A trial judge is not required to transcribe every word spoken by counsel in court. It would suffice if he recorded the substance of that argument.

This protracted quibble over words was taken up by counsel solely to align certain facts of the case to his Petition of Appeal, which rested its main issue on the appellant having been persuaded into pleading guilty by the Deputy Public Prosecutor's agreement not to press for a 'deterrent sentence.' But this does not seem to be all that the appellant intended to do. In paragraph (d) of his grounds of appeal, he has added the word 'custodial' to what he originally claimed only as 'deterrent sentence.' In other words, he has now alleged that the Deputy Public Prosecutor had not only agreed not to press for a deterrent sentence but also for custodial sentence. The intention for so doing, no doubt, is to cover any agreement that deterrent sentence does not mean custodial sentence. This approach adopted may be subtle but is characteristic of his *mala fides* in this appeal.

In support of this allegation counsel produced two photostats of the newspaper cuttings. He also drew the court's attention that the fact that the President had omitted to record the case cited by him, *R.* v. *Turner,*[1] but admitted doing so in his judgment, would, by itself, indicate the incorrectness of the records.

On the first matter, I need only refer to section 80 of the Evidence Act, which presumes that the records of evidence in a judicial proceedings were legally and correctly done. If counsel wishes to rebut this presumption, then he must do so by the introduction of proper contrary additional evidence such as by the introduction of affidavit by himself or the court staff, or perhaps the newspaper reporters concerned. In the absence of acceptable evidence in rebuttal, I reject this allegation. Likewise, as regards the second inferred allegation about the learned President's failure to record the cited case of *R.* v. *Turner,* I am unable to accept the inference of inaccuracy merely on his omission to record a cited case. An authority is merely cited for the purpose of assisting the court on certain legal matters and failure to record it will not, in any way, prejudice the appellant's case. It would be otherwise if he had failed to record a material fact of the case.

In any event, even if counsel had in fact taken objection on the agreement not to press for a deterrent sentence, the learned President had clearly indicated that he had accepted the learned Deputy Public Prosecutor's version to leave the matter of sentence to the court. The learned President was entitled to arrive at this finding of fact.

The next matter to be considered is whether, having accepted the appellant's guilty plea and recorded a conviction, the trial judge had any authority to allow the appellant to change his plea. There was some confusion on this matter, particularly so in the case of *Rex* v. *Sheridan*[2] and *Rex* v. *Grant,*[3] where it was held that a magistrate is *functus officio* after finding of guilty. This point, however, was subsequently altered in *R.* v. *McNally;*[4] *Reg.* v. *Campbell,*[5] *Reg.* v. *Cole*[6] and it was fully discussed and finally settled in the House of Lords case of *S. (An Infant)* v. *Recorder of Manchester,*[7] where it was held that a court of summary jurisdiction, which had accepted a plea of guilty to the offence charged, was not in law debarred from permitting a plea of not guilty to be substituted at any time before that court passes sentence.

There is no doubt in our present case that as the application to withdraw the plea was made before the sentence, the learned President had the discretionary power to allow the applicant to change his plea.

The next question to be determined is whether there has been a proper exercise of discretion by the learned President when he turned down the appellant's request. The appellant's contention is that he had erred in law and fact as he did not consider the element of plea bargaining between the prosecution and the defence.

It may be desirable at this stage to consider the nature and legal effects of plea bargaining. Although there are a number of English judicial authorities on this subject, I have been unable so far to find any local decided case on plea bargaining. The leading English authority on this appears to be *R.* v. *Turner.*[1] In that case the appellant pleaded not guilty to the theft of his own car from the garage proprietor who had a lien on it. His counsel, who mistakenly got the impression from the clerk of court that the judge would deal with him leniently if he pleaded guilty, unduly persuaded the appellant to change his plea just before some police officers were about to give their evidence. The appellant refused but finally gave in to his counsel's strong advice believing that counsel was repeating the intimation emanating from the judge. He retracted his previous plea and was given a custodial sentence. The Court of Criminal Appeal ordered a *venire de novo* as the conduct of the counsel had given him the impression that he was under pressure by the court to plead guilty or else suffer a more severe sentence.

The Court of Criminal Appeal also laid down four rules or guidelines to judges and counsel, which, I think, should be herein reproduced:

"1. Counsel must be completely free to do what is his duty, namely, to give the accused the best advice he can, and if need be advice in strong terms. This will often include advice that a plea of guilty showing an element of remorse, is a mitigating factor which may well enable the court to give a lesser sentence than would otherwise be the case. Counsel of course will emphasise that the accused must not plead guilty unless he has committed the acts constituting the offence charged.

2. The accused, having considered counsel's advice, must have a complete freedom of choice whether to plead guilty or not guilty.

3. There must be freedom of access between counsel and judge. Any discussion, however, which takes place must be between the judge and both counsel for the defence and

counsel for the prosecution. If a solicitor representing the accused is in the court he should be allowed to attend the discussion if he so desires. This freedom of access is important because there may be matters calling for communication or discussion, which are of such a nature that counsel cannot in the interests of his client mention them in open court. Purely by way of example, counsel for the accused may by way of mitigation wish to tell the judge that the accused has not long to live, is suffering maybe from cancer, of which the accused is and should remain ignorant. Again, counsel on both sides may wish to discuss with the judge whether it would be proper, in a particular case, for the prosecution to accept a plea to a lesser offence. It is, of course, imperative that, so far as possible, justice must be administered in open court. Counsel should, therefore, only ask to see the judge when it is felt to be really necessary and the judge must be careful only to treat such communications as private where, in fairness to the accused person, this is necessary.

4. The judge should, subject to the one exception referred to hereafter, never indicate the sentence which he is minded to impose. A statement that, on a plea of guilty, he would impose one sentence but that, on a conviction following a plea of not guilty, he would impose a severer sentence is one which should never be made. This could be taken to be undue pressure on the accused, thus depriving him of that complete freedom of choice which is essential. Such cases, however, are in the experience of the court happily rare. What on occasion does appear to happen, however, is that a judge will tell counsel that, having read the depositions and the antecedents, he can safely say that, on a plea of guilty, he will, for instance, make a probation order, something which may be helpful to counsel in advising the accused. The judge in such a case is no doubt careful not to mention what he would do if the accused were convicted following a plea of not guilty. Even so, the accused may well get the impression that the judge is intimating that, in that event, a severer sentence may be a custodial sentence, would result, so that again he may feel under pressure. This accordingly must also not be done. The only exception to the rule is that it should be permissible for a judge to say, if it be the case, that, whatever happens, whether the accused pleads guilty or not guilty, the sentence will or will not take a particular form e.g. a probation order or a fine, or a custodial sentence. Finally, where any such discussion on sentence has taken place between judge and counsel, counsel for the defence should disclose this to the accused and inform him of what took place.'

Since *Turner's* case there have been several English authorities on this subject. In *R.* v. *Stanley Grice*[8] the Court of Appeal set aside the sentence imposed by a lower court subsequent to a breach of undertaking by an accused because the act of the lower court was done in clear disregard of the directions laid down in *R.* v. *Turner.*[1] In the same year in the case of *R.* v. *George Bird*[9] the Court of Appeal dealt with another case of plea bargaining. In that case the judge offered a suspended sentence to a plea of guilty by the accused. The offer was made privately. The accused elected to go on trial and was convicted and imprisoned for 21 months. Counsel raised the previous bargaining during mitigation and contended that the sentence the judge was minded to give should equally apply whether the accused pleaded guilty or was found to be so after trial. The Court of Appeal held that it was counsel's duty to mention about the bargaining in mitigation and that the severe sentence could have been interpreted by the public as a punishment for refusal to plead guilty. The imprisonment was accordingly varied to a lesser term. The principle was similarly applied in *R.* v. *Llewelyn*[10] in which it was held that a judge's offer could raise an implication that he was prejudiced against the accused and was placing extra pressure on him. The same point was held in *R.* v. *Ryan,*[11] where the judge, at the request of defence counsel, indicated that he would likely give a non-custodial sentence. Acting on this the accused changed his plea to one of guilty. Additional evidence affecting the sentence came to light and the judge imposed a custodial sentence. *Venire de novo* was ordered by the Court of Appeal as it was held that the plea was made under pressure.

In all the aforementioned cases plea bargaining has been accepted as a successful ground for appeal where the bargaining involves the court and the accused. Understandably where an accused person has been given the impression that the judge is a party to the bargain, he has no reason to doubt the authority and veracity of that promise. Plea bargaining has been judiciously disapproved in the British Courts because such practices often give rise to the implication of duress, pressure, prejudice and breach of promise by the judges. Recent cases have shown that the appellate courts will only interfere with the judgment of the trial court where there existed evidence of plea bargaining between the court and the defence.

The judicial view of the English Courts on the subject has been clearly propounded by Lord Scarman in *R.* v. *Atkinson*[12] at page 462 in which his Lordship says:

"Plea-bargaining has no place in the English criminal law. It is found in some systems of law in which the prosecution are entitled to make submissions as to the character or length of the sentence. In such systems of law it is possible for a bargain to be driven between the defence and the prosecution, but never, so far as my researches have gone, with the court itself. In our law the prosecution is not heard on sentence. This is a matter for the court, after considering whatever has to be said on behalf of the accused man. Our law having no room for any bargain about sentence between court and defendant, if events arise which give the appearance of such a bargain, then one must be very careful to see that the appearance is corrected."

Plea bargaining between the defence and the prosecution frequently takes place in our courts, but they are normally confined to the instances of the accused pleading guilty to lesser charges or to one of several charges in exchange for withdrawal of the rest. Be it noted here that the Deputy Public Prosecutor is offering as his bargain something he is authorised by law to do, i.e. not to proceed with or amend charges. But imposing sentence, let alone reducing or enhancing it, is entirely not his within the contemplation of any law.

This court does not consider it bound by the private bargaining between the prosecution and the defence in respect of which bargaining it is not a party and in which it has been judicially prohibited to participate. The right to impose punishment on a guilty party is absolutely the discretion of the court. It will exercise that power judicially but will not tolerate any encroachment or even semblance of encroachment either by the prosecution or the defence in respect of such right. An agreement between the prosecution and the defence as to the nature of sentence to be imposed on the accused creates no obligation on the court and is good only for pricking the conscience of the defaulting party.

In this case counsel should have known that even if the prosecution had kept to its promise (assuming that it did so promise), not to press for deterrent

sentence, such promise would be of little or no use as sentences are known to be within the absolute province of the court. Any person, more so for those skilled in the science of the law, must surely comprehend the significance and outcome from making such a promise. If counsel conveys differently to his client so as to give the impression that the court would act on the suggestion and treat him leniently with a non-custodial sentence, then I would say that he had sadly misappreciated the law.

Plea bargaining between the prosecution and defence could only form ground for appeal if the appellant has been misled as to the consequence of his plea. As this is a latent fact peculiarly in his knowledge, it is for him to satisfy the court that he has been labouring under such a mistaken belief of law or fact at the time when he pleaded guilty to the charge.

The actual state of the appellant's mind is certainly beyond the reaches of this court and the court below. It is imperative that the appellant discloses evidence of the circumstances surrounding the plea bargaining, the manner the offer was conveyed to him, his own counsel's advice to him and his understanding of the whole situation. Counsel for the appellant was strangely silent on this factual information. Solicitor-client communication is, of course, a privileged communication but unless he is willing to waive part of this, he will be in no position to persuade the court that he has been misled. In the absence of such evidence I can only presume that counsel faithfully conveyed to the appellant either of the two disputed versions, i.e. Deputy Public Prosecutor had agreed not to press for a deterrent sentence, or the Deputy Public Prosecutor says he would leave the sentence to the court to decide. Neither of these two versions alone, to my mind, will convey to the appellant that he would escape a custodial sentence. The consequence of pleading guilty to the charge has been explained to the appellant as stated in the notes of evidence and the learned President's written judgment. The learned President was satisfied that the appellant understood it and I see no reason to interfere with such finding unless the appellant states he had been given to understand differently by his counsel. Supposing the Deputy Public Prosecutor did promise and counsel did tell the appellant that the consequence of the learned Deputy Public Prosecutor not pressing for a deterrent sentence or leaving the sentence to the court was that the court would not impose a custodial sentence, would the appellant succeed? I do not think so. As mentioned earlier, the power to impose any sentence lies absolutely with the court and not with the learned Deputy Public Prosecutor or defence counsel. If the court were to heed the behest of the Deputy Public Prosecutor on sentence, there would probably be lesser men walking in the sunshine today. Similarly appellate courts have often exercised their powers of revision to enhance sentences imposed by lower courts although the prosecution was apparently satisfied with the sentence. Such an advice, if in fact given by counsel, is indeed founded on error of law and a mistake in law will not form a good ground for appeal, but will merely give rise to discretion to allow the change of plea. In the case of *Foster (Haulage) Ltd.* v. *Roberts*[13] the Crown Court held that the fact that there might have been a mistake in law by the adviser does not alter the nature of the plea and is not a matter which calls on the justices to consider the exercise of their discretion. The Queens Bench Division however held that the presence of an incompetent lawyer cannot act as a bar to the use of this discretionary power.

Lastly the matter to be considered is whether the learned President had exercised his discretion correctly in refusing the retraction of plea. I have no doubt that he did so. Other than the mere assertion appearing in the Petition of Appeal nothing of appreciable value has been placed before the learned President to warrant a finding that the appellant had been misled by the promise. An agreement to leave matters of sentence to the court or not to press for a deterrent sentence could not by itself connote the pledge that the appellant would not receive a custodial sentence from the court.

Another factor which disfavours the exercise of discretion is found in the simple nature of the case itself. The facts of the case indicate that the appellant had walked into a well planned trap laid by B.S.N. and was eventually apprehended red-handed. The facts show what appears to be an open and shut case against which the appellant practically had no defence and indeed he has not been able to show in this court or the court below that he had any defence at all. The allegation of broken bargain with the Deputy Public Prosecutor is, to my mind, not the sole reason for his pleading guilty.

I am convinced that the learned President had exercised his discretion fairly and judiciously. As Lord Upjohn puts it in the case of *S.* v. *Recorder of Manchester*[14] at page 507:

> "... If the court upon all the facts before it, thinks it is proper to accept a plea of guilty then the court may permit that plea to be withdrawn and a plea of not guilty accepted at a later stage up to sentence, that is, until the complete adjudication of conviction.
>
> But, my Lords, it is hardly necessary to add that this discretionary power is one which should only be exercised in clear cases and very sparingly."

On the question of sentence it was argued on behalf of the appellant that the punishment imposed by the lower court was excessive and that the learned President took the wrong view on the principle of assessing sentence, in particular his views on public interest.

The case of *R.* v. *Ball*[15] has been widely canvassed in this court as a means for avoidance of custodial sentence. Unfortunately the sagacious observation of Hilbery J. that "public interest is indeed served, and best served, if the offender is induced to turn from criminal ways into honest living" has been used in more ways than the learned judge could ever imagine. In that case the learned judge was not laying any rules on public interest but was merely observing what public interest would be in relation to the 23 years old offender who had exceptional antecedents and character. Public interest varies according to the time, place and circumstances of each case including its nature and prevalence. What may be of public interest in one place may differ from another.

Similarly inducement to turn from criminal ways into honest living can take several forms and will have to depend to a greater extent on the attitude of the offender and his suitability for any particular type of reformation.

The case before the learned President, however, concerns a worldly man, 30 years of age, the manager of a trading company and, no doubt, by the prevailing standards of living, a wealthy man. His initial offer of bribe, before any haggling, stood at $1,000. He proferred the bribe boldly and was even prepared to host any corrupt officer in his own house in Kuala Lumpur and there to cultivate ties with people who would join him in a conspiracy to defeat the law and cheat the public. The learned President was therefore right in holding that in a corruption case involving commercial firms a custodial sentence is an appropriate remedy. Fines will not deter the rich and wealthy from committing corruption if they get the impression that the same riches that they use to perpetrate the offence can buy them freedom out of the courthouse.

It was also contended by defence counsel that the appellant was enticed into committing the offence by the small compound fee offered by the R.I.M.V. officer. I cannot find any merit for this argument. Other than the comparison between the $18,000 maximum punishable fine and the compound fee of $850, counsel did not disclose what was the normal compound fee payable as compared with the fee offered to his client. In any event the low compound fee, in my view, would only serve to discourage corruption as it removes undue pressure on the offences and makes it more attractive to compound the offences rather than pay additional sums as gratifications.

Counsel drew my attention to the case of *Public Prosecutor* v. *Datuk Tan Cheng Swee & Anor.*[16] where the court imposed a fine of only $2,000 in respect of an offence carrying a heavier maximum penalty. I think the distinguishing factors between that case and the present one is that in *Datuk Tan Cheng Swee's* case the punishment was imposed by the Federal Court following the reversal of the order of acquittal by the High Court. The Federal Court, not having had the opportunity of seeing and hearing the witnesses including the accused, was in a considerably disadvantageous position on the question of sentence. *Dato Tan Cheng Swee's* case is, no doubt, a case of exceptional leniency shown by the Federal Court to an appellant. But when a conviction is substituted for acquittal at the appellate stage and when the appellate court has no opportunity of witnessing the trial proper including the conduct of the accused, such attitude of leniency is not entirely unexpected. This case, I do not think, is intended to be the yardstick for sentences involving corruption.

The circumstances there are quite different from our present case. We are not asked here to impose a sentence but to interfere with the sentence already passed by the trial court. As such our consideration here is based on entirely different principles. Perhaps another factor of significance is that *Datuk Tan Cheng Swee's* case involved a certain technicality.

Counsel finally drew my attention to the case of *Ng Kok Jooi* v. *Public Prosecutor*[17] in which Arulanandom J. drew distinctions between the givers and takers of bribes. With respect, to this distinction should be added another — between the givers themselves — that is the ones who give the bribes with one hand whilst having the other twisted at his back (the ones referred to by Arulanandom J.) and the other category who, with both arms outstretched, alluringly reach out for the more injudicious officers of the Government to *proffer bounteous* sums of unsolicited bribes. This second category of givers can be more harmful than the takers themselves to our system of orderly government. The measure of punishment to be imposed on them should bear some proportion to the malignity present in the mind of such offender. As Gordon-Smith J. pronounced in *Rex* v. *Teo Cheng Lian*[18] at page 17:

> "bribery and corruption of officialdom is like a cancer which may grow and destroy the whole body as, I conjecture, is illustrated by recent events in China. Operative treatment at the commencement may or may not be the cure but it is worth trying."

It is an established principle of our criminal law that an appellate court will not alter the sentences of the trial court unless the sentences are manifestly wrong and that such sentence should not be interfered with merely because the High Court might pass a different sentence — see *Public Prosecutor* v. *Fam Kim Hock*[19] and *Rex* v. *Teo Cheng Lian, supra.*

I do not detect any manifest error on the part of the President in law or in considering the facts of this case and I do not think either that an imposition of 6 months' imprisonment out of the maximum of 60 months for such a serious offence to be in any way excessive.

I would accordingly dismiss the appeal both against the denial of his retraction of plea as well as against sentence.

The cross-appeal by the prosecution for inadequacy of sentence is likewise dismissed.

Appeal and cross-appeal dismissed.

Solicitors: *Manjeet Singh & Co.*

LOY CHIN HEI v. PUBLIC PROSECUTOR

[O.C.J. (Wan Yahya J.) May 6, 1981]
[Malacca — Miscellaneous Criminal Application No. 2 of 1981]

Criminal Law and Procedure — Bail — Offence under Dangerous Drugs Act, 1952 — Restriction on bail absolute.

The accused applied for bail pending disposal of the charge against him. He had been charged with an offence under section 6B(1)(a) of the Dangerous Drugs Act, 1952.

Held: the restriction on bail under section 41B of the Dangerous Drugs Act is absolute and neither the court below nor the High Court has power to admit to bail any person charged thereunder with any offence punishable with death or more than five years' imprisonment or even for lesser terms when the Public Prosecutor certifies that it is against the public interest to allow bail.